Trans-Lux Midwest Corporation *and* International Brotherhood of Electrical Workers, Local Union No. 347. Case 18–CA–14523

August 27, 2001

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN AND WALSH

Upon a charge filed on June 18, 1997, by the International Brotherhood of Electrical Workers, Local Union No. 347 (the Union),[1] the General Counsel of the National Labor Relations Board issued a complaint on April 8, 1998, alleging that the Respondent, Trans-Lux Midwest Corporation, violated Section 8(a)(5) and (1) of the Act by unlawfully failing to recognize the Union, on request, as the exclusive representative of its production and maintenance employees. The Respondent filed a timely answer admitting in part and denying in part the allegations of the complaint.

On June 15, 1998, the above-named parties and the General Counsel filed a motion to transfer proceeding to the Board. They agreed that the stipulation of fact with appended exhibits constituted the entire record in the case, and that no oral testimony was necessary or desired by any of the parties. The parties waived a hearing before an administrative law judge and the issuance of a decision by an administrative law judge. The parties stated their desire to submit this case directly to the Board for findings of fact, conclusions of law, and the issuance of a Decision and Order. On July 17, 1998, the Board issued an order approving stipulation, granting motion, and transferring proceeding to the Board.

The General Counsel, the Respondent, and the Union each filed a brief. The Respondent filed a reply to the Union's brief. The Union filed a motion to strike the Respondent's reply brief or, in the alternative, for the Board to accept the Union's response brief, which it also filed.[2]

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record and briefs, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a wholly owned subsidiary of Trans-Lux Corporation, a Delaware corporation. The Respondent has an office and places of business in Des Moines, Iowa (the Respondent's Trans-Lux Midwest facility), where it is engaged in the manufacture and nonretail sale and distribution of indoor and outdoor electronic display signs at various locations throughout the United States. During the calendar year ending December 31, 1997, a representative period, the Respondent, in the course and conduct of its operations, purchased and received at its Trans-Lux Midwest facility goods valued in excess of $50,000 directly from sources outside the State of Iowa, and sold and shipped from this facility goods valued in excess of $50,000 directly to points located outside the State of Iowa.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Facts

About May 1, 1997, the Respondent purchased certain business assets of the Fairtron Corporation and since then has continued to operate the business of Fairtron (manufacturing electronic scoreboards) in essentially the same form, except that the Respondent reduced the production of custom-made equipment at the facility at issue. At all relevant times before May 1, 1997, the Union was the exclusive representative of the bargaining unit employees.[3]

At the time of the asset sale, there were about 40 employees in the Fairtron bargaining unit. The Respondent hired 30 of these 40 unit employees. Since the asset sale, the Respondent has employed, as a majority of its unit employees, individuals who were previously unit employees of Fairtron.

Of the 40 Fairtron unit employees at the time of the sale, 15 were union members (13 paid dues by checkoff and 2 paid the Union directly). The Respondent knew of the 13 "checkoff" members.

Six of the thirty Fairtron unit employees hired by the Respondent were union members. The Respondent later hired a seventh union member. The other eight union members were not hired.

[1] The Union filed an amended charge on September 25, 1997.

[2] We deny the Union's motion to strike the Respondent's reply brief. We grant the Union's alternative motion to accept the Union's response brief.

[3] The unit consisted of:

All regular full-time and regular part-time production and maintenance employees, including crating and shipping department employees and leadpersons employed at its facilities at 1700 Delaware Avenue and 2301 Dean Avenue, Des Moines, Iowa; but excluding service department employees, small parts shipping and mailing department employees, rehired retired employees, office clerical employees, temporary employees, temporary contract labor, casual employees, guards and supervisors as defined in the National Labor Relations Act, as amended.

By letter dated May 19, the Union requested to meet and bargain with the Respondent. On June 5, by letter, the Respondent rejected the Union's request for bargaining, stating that it would recognize the Union if and when the latter had established majority support. The Respondent stated that authorization cards would suffice for this purpose. The complaint does not allege that the Respondent acted unlawfully in setting initial terms and conditions of employment for the Fairtron Corporation employees it hired, or that it unlawfully refused to hire any Fairtron unit employees. The parties stipulated that the General Counsel does not challenge the Respondent's right to set initial terms and conditions of employment for its employees.

B. Contentions of the Parties

The General Counsel argues that the Respondent was a *Burns*[4] successor, and was therefore obligated to recognize and bargain with the Union. The General Counsel contends that the Respondent's defenses to a presumption of continuing union majority status are not defenses recognized by the Board. In this regard, the General Counsel maintains that the level of union membership is not relevant and that communication to the Respondent from the Union was not lacking and, even if it were, it is not a relevant factor under the circumstances. The General Counsel submits that the Respondent has not successfully rebutted the Union's presumption of majority status, and that the Respondent's refusal to recognize and bargain with the Union therefore violated Section 8(a)(5) and (1) of the Act. The General Counsel seeks a Board ruling requiring the Respondent to recognize and bargain with the Union.

The Respondent argues that it was not obligated to bargain with the Union because it had a good-faith doubt that the Union represented a majority of the employees. The Respondent emphasizes that only 15 of the 40 employees in the former employer's unit, and only 6 of the 30 employees initially hired by the Respondent, are Union members. The Respondent cites *Allentown Mack Sales & Service v. NLRB,* 522 U.S. 359 (1998), in which the Supreme Court held that the Board's "good faith reasonable doubt" standard meant that an employer could withdraw recognition from an incumbent union on the basis of a genuine, reasonable uncertainty as to the union's continued majority support. Id. at 367. The Respondent contends that evidence of low union membership could contribute to such an uncertainty. The Respondent contends that a successor employer should be allowed to condition recognition on a showing of authorization cards where (as the Respondent maintains is the case here) the following factors are present: a majority of employees in the former or present unit were not union members; former union leaders employed by the successor did not refer to the union at any time during the hiring process; the union offers no evidence of majority support; and, the employer has been silent about the union and has not communicated either the fact of the union's demand for recognition, or the employer's response, to the employees.

The Union argues that the Respondent was a *Burns* successor and, as such, was obligated to recognize and bargain with the Union on demand. In this regard, the Union contends that the Respondent hired a majority of Fairtron's employees, and that a majority of the Respondent's employees were previously employed by Fairtron. The Union also contends that the Respondent conducts substantially the same business as Fairtron, and the Union demanded bargaining in an appropriate unit. The Union maintains that the Respondent did not have a good-faith doubt that the Union represented a majority of unit employees at the Des Moines facility. The Union submits that the record evidence refutes any assertions by the Respondent that the Union was inactive or uncommunicative so as to support a good-faith doubt on the Respondent's part. The Union argues that, because the Respondent had no legal basis to demand a showing of cards, it cannot rely on the Union's noncompliance with that demand. The Union contends that the fact that most unit members were not union members was insufficient to serve as a basis for good-faith reasonable doubt as to the Union's majority status. The Union maintains that *Allentown Mack Sales & Service,* supra, is distinguishable because here there were no employee statements indicating that the Union had lost support.

The Union seeks, in addition to the remedy requested by the General Counsel, a requirement that the Respondent bargain with the Union for a year from the date of the Board's order, as well as a requirement that the Respondent rescind any unilateral changes in the employees' terms and conditions of employment and make the employees whole by remitting all wages and benefits that would have been paid in the absence of the Respondent's unlawful conduct, until the Respondent negotiates in good faith to agreement or impasse.

[4] *NLRB v. Burns Security Services,* 406 U.S. 272 (1972). *Burns* presented the issue of what, if any, bargaining obligation an employer has when it takes over a predecessor employer's business and operates it in substantially the same form with a work force a majority of whom were employed by the predecessor. The Supreme Court agreed with the Board that, in those circumstances, the successor employer must recognize and bargain with the union that represented the predecessor's employees. Id. at 280–281.

C. Discussion

As we discuss below, we find that the Respondent is a *Burns* successor to Fairtron. We also find, for two reasons, that the Respondent was not entitled to withhold recognition from the Union pending a demonstration of the Union's majority support. First, we agree with the General Counsel and the Union that the Respondent failed to show that it had a good-faith reasonable uncertainty as to the Union's majority status when it withheld recognition. Second, in two decisions issued since this proceeding was transferred to the Board, the Board has held that, once a successor employer's duty to bargain arises, the employer must bargain for a reasonable period of time before the union's majority status can be questioned.[5] Thus, even if the Respondent had harbored a good-faith uncertainty as to the Union's majority support, it could not lawfully deny recognition when it did because it had not bargained for a reasonable time.

1. Good-faith uncertainty

Although the Respondent, in its answer to the complaint, denied that it was a successor to Fairtron, it does not make that precise argument to the Board. Indeed, the Respondent, in the "Questions Presented" portion of its brief, uses the term "successor employer" in two of its four questions, and the term "successor employers" in another. Rather, the Respondent contends that the *Burns* formula should not be applied "woodenly" without considering the particular facts and circumstances of the instant case. The Respondent maintains that those facts and circumstances support its claim of good-faith doubt.

In any event, we find that the Respondent is a *Burns* successor. Most of the Respondent's employees were previously employed by Fairtron[6] and the Respondent has presented no evidence of a change in the work or makeup of the bargaining unit. Also, the Respondent is using substantially the same facilities to make the same basic product for essentially the same customers in the same geographic area.

Because the Respondent is a *Burns* successor, the Union enjoys a rebuttable presumption of continuing majority status.[7] To justify its refusal to extend recognition, the Respondent must produce objective evidence of the absence of majority support for the Union or objective evidence supporting a good-faith uncertainty on the Respondent's part as to the Union's continuing majority support.[8] Otherwise, the Respondent's non-recognition violates Section 8(a)(5) of the Act. The Respondent does not claim to have shown actual loss of majority support, but rather asserts a "good-faith doubt."[9]

We find that the Respondent has failed to establish that it had a good-faith uncertainty that the Union represented a majority of the employees. The issue of majority support turns on whether most unit employees wish to have union representation, not on whether most unit employees are members of a particular union. See, e.g., *Manna Pro Partners,* 304 NLRB 782, 783 (1991), enfd. 986 F.2d 1346 (10th Cir. 1993). Similarly, the number of members or financial supporters of an incumbent union is not necessarily the same as the number of employees continuing to support union representation, *R.J.B. Knits,* 309 NLRB 201, 205 (1992). This is especially true in a so-called right-to-work state such as Iowa. *T.L.C. St. Petersburg, Inc.,* 307 NLRB 605 (1992) (the number of employees who have authorized the checkoff of union dues does not indicate—particularly in a right-to-work state—how many employees favor union representation, whether or not they are members of the union). Accordingly, we reject the Respondent's contention that it had a good-faith uncertainty as to the Union's majority status because only 15 of the 40 employees in Fairtron's unit, and only 6 of the 30 employees initially hired by the Respondent, were members of the Union.

We also reject the Respondent's contention that it had a good-faith uncertainty based on alleged lack of communication from the Union. About March 11, Union Business Agent Gerald Granberg and Local Union President Scott Glass met with Alan Foster, Fairtron vice

[5] *St. Elizabeth Manor, Inc.,* 329 NLRB 341 (1999); *Inn Credible Caterers,* 333 NLRB 898 (2001).

[6] In fact, all of the employees hired by the Respondent for its May startup date were former Fairtron employees.

[7] *Burns,* supra at 278.

[8] See, e.g., *Guerdon Industries*, 218 NLRB 658, 659 (1975). As we explain below, this evidence would be unavailing for the Respondent, even if it had been produced. See *St. Elizabeth Manor*, supra; *Inn Credible Caterers,* supra. In any event, as we also show below, the Respondent failed to produce it.

[9] In *Levitz,* 333 NLRB 717 (2001), which issued while this case was pending before the Board, the Board overruled *Celanese Corp.,* 95 NLRB 664 (1951), and its progeny insofar as they permitted an employer to withdraw recognition from an incumbent union on the basis of a good-faith doubt of the union's continued majority status. The *Levitz* Board held that "an employer may unilaterally withdraw recognition from an incumbent union only where the union has actually lost the support of the majority of the bargaining unit employees." Id. However, the Board also held that its analysis and conclusions in that case would only be applied prospectively; "all pending cases involving withdrawals of recognition [will be decided] under existing law: the 'good-faith uncertainty' standard as explicated by the Supreme Court" in *Allentown Mack.* Here, we find that the Respondent has not established—sufficient to support its refusal to recognize the Union—that it had a good-faith uncertainty, based on objective evidence, that the Union continued to have majority support in the bargaining unit.

Chairman Hurtgen, concurring in *Levitz,* disagreed with the new standard.

president (later Trans-Lux vice president), to discuss the pending sale and layoff issues. On April 24, 1997, Granberg sent a letter to Foster at "Fairtron-Translux," identifying himself as representative of the bargaining unit and asking for a list of employees, the names and addresses of all unit members, and the identities of those who would be laid off. He asked that the information be provided by April 28. On May 19, Granberg again wrote to Foster at Trans-Lux, asking to reopen negotiations in order to continue their "fine history" of working together. He asked for a reply within 10 days. On June 5, Richard K. Kramer, the Respondent's human resources director, sent a letter to Granberg stating that the Respondent would recognize the Union if it demonstrated majority support among the current work force in the unit.

In light of these contacts, we find that there was no significant gap in the Union's communication with the Respondent. See, e.g., *King Soopers, Inc.,* 295 NLRB 35, 38 (1989) (no communication between the parties from February 18 to June 25, 1987; 4-month hiatus was not a sufficient objective consideration on which to base a good-faith doubt of majority support).

The Respondent also asserts that Glass failed to affirm that employees continued to support the Union. As discussed, the Union enjoyed a rebuttable presumption of majority status. There is no requirement that the Union must reaffirm its continuing majority status. The Union requested recognition on May 19, just 18 days after the sale, and the absence of immediate postsale communication from the Union's president does not imply that the Union had lost majority support. *Albany Steel, Inc.,* 309 NLRB 442, 451 (1992), enfd. 17 F.3d 564 (2d Cir. 1994).

Contrary to the Respondent's assertion, the dearth of evidence of lost majority support for the Union distinguishes this case from *Allentown Mack.* In that case, a significant number of employees, including a union steward, made statements to the successor employer suggesting that the incumbent union had lost support among unit employees. Here, by contrast, no employee mentioned any dissatisfaction with the Union either before or after the sale.[10]

[10] The Respondent has presented no compelling reason why the Board should adopt special rules for situations in which an employer conditions recognition and bargaining on a showing of authorization cards, and we decline to do so. What matters is not that the employer leaves open the possibility that he will recognize the union if a condition is met later, but rather that the employer has failed to recognize the union in the first place, despite being required to do so.

2. Successor bar rule

An additional basis for our finding that the Respondent unlawfully refused to recognize the Union is the Board's decision in *St. Elizabeth Manor, Inc.,* supra , as extended to the unfair labor practice context by *Inn Credible Caterers*, supra.[11] In these cases, the Board found that once a successor's duty to bargain attaches, and for a reasonable time thereafter, there can be no challenges to the union's majority status. Thus, for a reasonable period of time, there is an irrebuttable presumption of the union's continued majority status. Applying these principles to the facts of this case, we find that the Respondent's obligation to recognize and bargain with the Union attached on May 19, when the Respondent had hired a substantial and representative complement of employees, a majority of whom had been employed by Fairtron, and the Union had demanded recognition.[12] The Respondent's June 5 refusal to recognize the Union therefore was not privileged, in light of the "successor bar" rule enunciated in *St. Elizabeth Manor* and *Inn Credible Caterers*.

D. The Remedy

The General Counsel seeks a Board order requiring the Respondent to recognize and bargain with the Union. The Union contends that this remedy is insufficient, and that the Respondent should also be required to bargain with the Union for a year from the Board's order, to rescind any unilateral changes in the employees' terms and conditions of employment, and to make the employees whole by remitting all wages and benefits that would have been paid in the absence of the Respondent's unlawful conduct, until the Respondent negotiates in good faith to agreement or impasse. We decline to impose this relief.

The complaint issued by the General Counsel does not allege that the Respondent acted unlawfully in setting initial terms and conditions of employment for the Fair-

[11] Chairman Hurtgen does not subscribe to the Board's decision in *St. Elizabeth Manor*, from which he dissented. For the reasons stated in Chairman Hurtgen's concurring opinion in *Inn Credible Caterers,* he also does not support the extension and application of *St. Elizabeth Manor* to the unfair labor practice context. Accordingly, Chairman Hurtgen does not join his colleagues' finding that these decisions form an additional basis for the instant violation or for the affirmative bargaining order.

Chairman Hurtgen also notes that, although he agrees with his colleagues that the instant statistics on union membership do not establish that the Union has lost majority support, he nevertheless finds those statistics suggestive. Had there been here, as in *Allentown Mack*, statements reflecting employee disaffection with the Union, Chairman Hurtgen might well have found that the complaint should be dismissed. On this stipulated record, he agrees with his colleagues that the Respondent did not establish that it had a good-faith uncertainty as to the Union's majority status when the Respondent refused recognition.

[12] See *St. Elizabeth Manor,* 329 NLRB, supra at 344 fn. 8.

tron employees it hired, or that it unlawfully refused to hire any Fairtron unit employees. Indeed, the parties stipulated that the General Counsel does not challenge the Respondent's right to set initial terms and conditions of employment for its employees or allege that the Respondent's hiring practices discriminated against any current or former employee in violation of the Act.[13] Further, not only did the General Counsel not allege that the Respondent made unlawful unilateral changes, but there is also no evidence that the Respondent made any unilateral changes after the Union sought recognition. In these circumstances, we find that there is not an adequate basis on which to order the rescission and make-whole relief sought by the Union.

As to the Union's request that the Respondent be required to bargain with the Union for a year from the Board's order, the Union asserts, inter alia, that such a remedy is necessary to deter employers from using *Allentown Mack* as a means for advancing frivolous claims of good-faith uncertainty, the implication being that the Respondent has done so. Although we have found that the Respondent has failed to establish its claim of good-faith uncertainty, we do not find that claim to have been frivolous. The complaint does not pray for the relief sought by the Union, and the stipulation does not address it. The Respondent entered into the stipulation with these facts in mind. In these circumstances, we do not think it appropriate to award the remedy the Union requests.

However, we shall enter an affirmative bargaining order which requires bargaining at least for a reasonable period of time. We find, for the reasons fully set forth in *Caterair International,* 322 NLRB 64 (1996), that an affirmative bargaining order is warranted in this case as a remedy for the Respondent's unlawful withdrawal of recognition from the Union. We adhere to the view, reaffirmed by the Board in that case, that an affirmative bargaining order is "the traditional, appropriate remedy for an 8(a)(5) refusal to bargain with the lawful collective-bargaining representative of an appropriate unit of employees." Id. at 68.

In several cases, however, the United States Court of Appeals for the District of Columbia Circuit has required that the Board justify, on the facts of each case, the imposition of such an order. See, e.g., *Vincent Industrial Plastics v. NLRB,* 209 F.3d 727, 734 (D.C. 2000); *Lee Lumber & Bldg. Material Corp. v. NLRB,* 117 F.3d 1454, 1462 (D.C. Cir. 1997); and *Exxel/Atmos, Inc. v. NLRB,* 28 F.3d 1243, 1248 (D.C. Cir. 1994). In *Vincent,* the court stated that an affirmative bargaining order "must be justified by a reasoned analysis that includes an explicit balancing of three considerations: (1) the employees' Section 7 rights; (2) whether other purposes of the Act override the rights of employees to choose their bargaining representatives; and (3) whether alternative remedies are adequate to remedy the violations of the Act." 209 F.3d at 738.

We respectfully disagree with the court's requirement, for the reasons set forth in *Caterair*.[14] Nevertheless, we have examined the particular facts in this case as the court requires, and we find that a balancing of the three factors warrants an affirmative bargaining order.

(1) An affirmative bargaining order in this case vindicates the Section 7 rights of the unit employees who were denied the benefits of collective bargaining by the Respondent's unlawful withdrawal of recognition from the Union. At the same time, an affirmative bargaining order does not unduly prejudice the Section 7 rights of employees who may oppose continued union representation because its attendant status is temporary.

Moreover, ordering the successor employer to bargain for a reasonable period of time with the incumbent union, as in this case, serves "to protect the newly established bargaining relationship and the previously expressed majority choice, taking into account that the stresses of the organizational transition may have shaken some of the support the union previously enjoyed." *St. Elizabeth Manor*, 329 NLRB, at 345. In successorship situations, the employees' anxiety about their status with the successor employer could lead to their disaffection before the union has the opportunity to demonstrate its continued effectiveness, and could tempt a reluctant successor employer to postpone its statutory bargaining obligation indefinitely. Id. at 342. To require bargaining to continue only for a reasonable period of time, not in perpetuity, fosters industrial peace and stability and will ensure that the bargaining relationship established between the Respondent and the Union will have a fair chance to succeed. Id. at 346.

(2) An affirmative bargaining order also serves the important policies of the Act to foster meaningful collective bargaining and industrial peace. The temporary decertification bar inherent in this order removes the Respondent's incentive to further delay bargaining or to engage in any other conduct that would further undercut employee support for the Union. It also ensures that the Union will not be pressured, by the possibility of a decertification petition, to achieve

[13] It is well settled that the General Counsel controls the theory on which the case is litigated, and the Charging Party may not seek remedies that are contingent on a theory different from that of the General Counsel. See, e.g., *ATS Acquisition Corp.,* 321 NLRB 712 fn. 3 (1996).

[14] Chairman Hurtgen does not disagree with the court.

immediate results at the bargaining table following the Board's resolution of its unfair labor practice charges and issuance of a cease-and-desist order. Providing this temporary period of insulated bargaining will also afford employees a fair opportunity to assess the Union's performance in an atmosphere free of the Respondent's unlawful conduct.

(3) A cease-and-desist order, alone, would be inadequate to remedy the Respondent's refusal to bargain with the Union in these circumstances because it would permit a decertification petition to be filed before the Respondent had afforded the employees a reasonable time to regroup and bargain through their chosen representative in an effort to reach a collective-bargaining agreement. Indeed, permitting a decertification petition to be filed immediately might very well allow the Respondent to profit from its own unlawful conduct. We find that theses circumstances outweigh the temporary impact the affirmative bargaining order will have on the rights of employees who oppose continued representation by the Union.

For all the foregoing reasons, we find that an affirmative bargaining order with its temporary decertification bar is necessary to fully remedy the Respondent's unlawful refusal to bargain with the Union in this case.

REMEDY

Having found that the Respondent has engaged in unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

ORDER

The National Labor Relations Board orders that the Respondent, Trans-Lux Midwest Corporation, Des Moines, Iowa, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to meet and bargain in good faith with the Union as the exclusive collective-bargaining representative of employees in the following appropriate unit:

> All regular full-time and regular part-time production and maintenance employees, including crating and shipping department employees and leadpersons employed at its facilities at 1700 Delaware Avenue and 2301 Dean Avenue, Des Moines, Iowa; but excluding service department employees, small parts shipping and mailing department employees, rehired retired employees, office clerical employees, temporary employees, temporary contract labor, casual employees, guards and supervisors as defined in the National Labor Relations Act, as amended.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain in good faith with the Union as the exclusive collective-bargaining representative of unit employees with respect to wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Within 14 days after service by the Region, post at its facility in Des Moines, Iowa, and at all other places where notices customarily are posted copies of the attached notice marked "Appendix."[15] Copies of the notice, on forms provided by the Regional Director for Region 18, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately on receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees customarily are posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 5, 1997.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
> To form, join, or assist any union
> To bargain collectively through representatives of their own choice
> To act together for other mutual aid or protection
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to bargain in good faith with the Union as the collective-bargaining representative of our employees in the following unit:

[15] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

All regular full-time and regular part-time production and maintenance employees, including crating and shipping department employees and leadpersons employed at our facilities at 1700 Delaware Avenue and 2301 Dean Avenue, Des Moines, Iowa; but excluding service department employees, small parts shipping and mailing department employees, rehired retired employees, office clerical employees, temporary employees, temporary contract labor, casual employees, guards and supervisors as defined in the National Labor Relations Act, as amended.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain in good faith with the Union as the exclusive collective-bargaining representative of our employees in the unit described above with respect to wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

TRANS-LUX MIDWEST CORPORATION